

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VERNON THOMAS)	
Claimant)	
VS.)	
)	Docket No. 189,941
LINDER & ASSOCIATES)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	

ORDER

On July 23, 1996, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on February 14, 1996, came on for oral argument. Appeals Board Member Kenton Wirth has recused himself from this matter and Jeff Cooper has been appointed as Appeals Board Member Pro Tem.

APPEARANCES

Claimant appeared by and through his attorney, James B. Zongker of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, David M. Druten of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What, if any, is the nature and extent of claimant's injury and/or disability?
- (2) Can the opinion of psychologist Dan Rice be considered as medical evidence?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant suffered accidental injury to his right hand on November 17, 1991, when a large conduit fell against his hand pinning it against a manlift cover. Claimant underwent several surgeries subsequent to the injury resulting in removal of bone fragments and a carpal tunnel release. Claimant has had several artificial joints placed in his hand and, at the time of regular hearing, was having significant pain and limited use of the right hand, with no gripping power. Claimant also alleged he had become depressed since the accident and was undergoing treatment by a psychologist for the first time in his life.

Evidence was provided from Dr. Ernest R. Schlachter and Dr. G. R. Wurster, both being medical doctors with Dr. Wurster also being a psychiatrist. Claimant also provided the deposition of Dan Rice, Ph.D., in psychology. Respondent objected to the use of Dr. Rice's opinion alleging he was not a medical doctor and thus his evidence could not be considered in this case. While the Appeals Board acknowledges Dr. Rice is not a medical doctor, he is nevertheless a qualified expert in the field of psychology and his opinion will be considered for purposes of evaluating claimant's alleged ongoing psychological problems related to this injury.

The Administrative Law Judge assessed claimant a 100 percent permanent partial disability as a result of the injury suffered to his hand. In doing so he considered the physical and psychological evidence resulting from claimant's injury. In reviewing the evidence, the Appeals Board notes that Dr. Wurster, a psychiatrist in Shawnee Mission, Kansas, found claimant to be psychiatrically qualified to work. He felt claimant had made a good adjustment to the injury and could find no indication of a clinical psychiatric disorder. Claimant's inability to work was based upon the injury to claimant's right hand rather than the psychiatric condition.

Claimant alleges the evidence from Dr. Schlachter and Dr. Rice is sufficient to grant claimant a work disability stemming from both the hand injury and the psychological results. In reviewing the evidence, the Appeals Board disagrees. Dr. Rice, in his October 1994 report, found that claimant's treatment was complete. He testified that claimant had no indication of depression as of the last treatment and there were no psychological limits to claimant's ability to work. He also felt that claimant did not meet the criteria for major depressive disorders and placed no limits upon claimant psychologically at his release.

Dr. Schlachter found that claimant had adjusted fairly well to his depression. He assessed claimant a 40 percent permanent partial impairment of function to the right hand. He diagnosed no psychological problems in claimant and recommended no psychological treatment. While he did acknowledge that there is a medical phenomenon experienced by people with severe crush injuries which develops into psychological injury, he diagnosed no such condition in claimant. The restrictions and limitations placed upon claimant by Dr. Schlachter were limited to use of the right hand and arm.

In workers compensation matters, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501, as amended, and K.S.A. 44- 508(g), as amended.

The psychological and medical evidence presented convinces the Appeals Board claimant has suffered injury to his right hand and forearm as a result of the accident on November 17, 1991, but claimant has failed to carry his burden of proving psychological trauma associated with this accident. This issue was discussed by the Court of Appeals in Wade v. Union Nat'l Bank, 10 Kan. App. 2d 645, 707 P.2d 1087, rev. denied 238 Kan. 879 (1985). In Wade, the Court of Appeals found it significant that claimant's psychological problems had no effect upon his ability to perform the same job in the future. In this instance, there is no assessment by any expert that claimant's inability to work is related to any psychological component. It is also significant that even though Dr. Rice assesses claimant a 10 percent functional impairment he places no psychological limits upon claimant's ability to work and was unable to diagnose a specific psychological condition. He agreed that claimant's treatment was complete at the time of his release.

K.S.A. 1991 Supp. 44-510e states in part:

"Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

The Appeals Board finds that claimant suffered accidental injury arising out of and in the course of his employment to his right hand and forearm. Claimant's request for additional compensation based upon the psychological impairment is denied.

The Appeals Board finds the impairment rating by Dr. Schlachter that claimant suffered a 40 percent permanent partial functional impairment to the right arm is the most appropriate as claimant did undergo a carpal tunnel release which extends the impairment into the wrist. Thus, any impairment rating limited to the hand would be insufficient to cover claimant's actual injury suffered. The Appeals Board finds that claimant has suffered a 40 percent permanent partial impairment to the right forearm on a functional basis and is granted an award for same.

The Administrative Law Judge found claimant to have a \$694 average weekly wage. This issue is not appealed to the Appeals Board and as such this finding is affirmed and will be utilized for the purpose of claimant's award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated February 14, 1996, should be, and is hereby modified and claimant, Vernon R. Thomas, is granted an award against respondent for a 40% permanent partial functional impairment to the right upper extremity at the level of the forearm.

Claimant is entitled to 91 weeks temporary total disability compensation at the rate of \$289 per week in the amount of \$26,299 followed by 43.6 weeks permanent partial disability on a functional basis at the rate of \$289 per week in the amount of \$12,000.40 for a total award of \$38,899.40. As of September 25, 1996, the entire amount would be due and owing in one lump sum minus amounts previously paid.

The Award of the Administrative Law Judge granting claimant outstanding unauthorized medical up to the statutory limit and future medical upon application to the Director is hereby affirmed insofar as it is not contrary to this opinion.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting	
Transcript of regular hearing	\$127.17
Barber & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$111.00
Deposition of Jerry D. Hardin	\$151.40
Deposition of Dan Rice, Ph.D.	\$183.50
Metropolitan Court Reporters, Inc.	
Deposition of G. R. Wurster, M.D.	\$181.55

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
David M. Druten, Kansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director